IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.836 OF 2001

Sanjay Natharam Sakhalkar & anr. ..Petitioners.

Vs.

Institute of Science & Ors. ..Respondents.

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Mr.V.P.Vaidya with Mr.Umesh Nabar for the Petitioners.

Mr.P.M.Mokashi, AGP for Respondent Nos.1 to 3.

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CORAM : DR.D.Y.CHANDRACHUD, J.

22nd March, 2005.

P.C. :

Both the Labour Court and, in revision the Industrial Court, have concurred in holding that no unfair labour practice had been established under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

The Petitioners, it is common ground,

were appointed purely on an ad-hoc basis for a period of six months initially and the letters of appointment stipulated that the appointment would in any event come to an end if within the period of six months a duly selected candidate recommended by the Regional Selection Board was made available. The First Petitioner was appointed as a Record Keeper, while the Second Petitioner as an Administrative Assistant in an ad-hoc capacity. After the expiry of the initial period the two Petitioners were issued fresh appointment orders. The term of appointment was due to expire on 9th January, 1993, but in the meantime both the Petitioners moved the Labour Court in a complaint of unfair labour practices under Items 1(a), (b), (d), (f) and (g) of Schedule IV. Under Item 1(a) the unfair labour practice lies in discharge or dismissal of an employee by way of victimisation. No such case was established on facts. Under item 1(b) the unfair labour practice lies in discharge or dismissal of an employee not in good faith, but in colourable exercise of the employer's right. Under item 1(d) the discharge or dismissal of an employee for patently false reasons is an unfair

labour practice, while under item 1(f), discharge or dismissal in utter disregard of the principles of natural justice in the conduct of a domestic enquiry or with undue haste is an unfair labour practice. Both the Petitioners who were ad-hoc employees were not selected through the regular process of selection through the Regional Selection Board which was in existence at the material time. When the Petitioners moved a complaint of unfair labour practice, the Labour Court protected their services by an interim order which continued until the complaint was dismissed on 18th July, 1998. The Industrial Court in revision declined to grant interim relief after which the Petitioners have not been in service. The Institute of Science, the First Respondent, is wholly owned by the State of Maharashtra. Obviously, posts have to be filled up by following the regular process of selection, in due compliance of the reservation roster and subject to availability of vacancies. The Petitioners who were appointed on an ad-hoc basis on appointments of a fixed term, had no vested right on entitlement to continue. The learned AGP appearing on behalf of the First, Second and Third

Respondents has also stated before the Court on instructions that upon the rejection of the application for interim relief by the Industrial Court in 1998, the two posts in issue have been manned by the existing members of the permanent staff and at no stage have any ad-hoc employee been appointed to those posts. In view of the ban on recruitment, no fresh recruitment is carried out. For all these reasons, I am of the view that no fault can be found with the order passed by the Labour Court and in revision by the Industrial Court. The Petitioners were ad-hoc employees appointed for specific terms without complying with the normal process for selection. There is no merit in the Petition which is accordingly rejected.